



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

January 11, 2008

CERTIFIED RETURN RECEIPT  
7005 2570 0000 4801 7451

Sean Murphy  
1024 East Kiva Drive  
Blanding, Utah 84511

Subject: Proposed Assessment for Notice of Violation MN07-03-09, Moon Mountain Stone, Cloudy Moon Quarry, S0370116, San Juan County, Utah

Dear Mr. Murphy:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under State Rule R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced Notice of Violation. The Notice of Violation was issued by Division Inspector, Paul Baker, on December 12, 2007. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-2007-03-09— \$440

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information, which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. Under R647-7-106, there are two informal appeal options available to you:

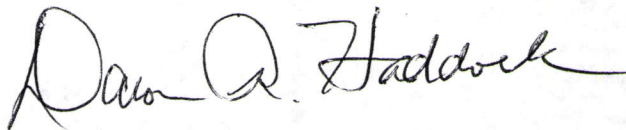
1. If you wish to informally appeal the fact of the Violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,

A handwritten signature in black ink that reads "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" and last name "Haddock" clearly legible.

Daron R. Haddock  
Assessment Officer



**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Moon Mountain Stone/ Cloudy Moon Quarry PERMIT S370116

NOV / CO # MN-07-03-09

VIOLATION 1 of 1

ASSESSMENT DATE January 10, 2008

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

*Environmental Harm/ Injury to the Public*

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS** 5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to complete reclamation of a mine after 5 years of inactivity. This requirement is designed to prevent sites from being abandoned and to prevent danger to the public or offsite environmental degradation. Nonpayment of permit fees is also an indication that the site may be abandoned. At this point it appears that there is only potential for damage to occur. Because there is a bond on the site the potential for abandonment is unlikely and points in the unlikely category are assessed.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS** 5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that there is some potential for an unreclaimed site to have erosion and offsite sedimentation, weed invasion, and danger to the public. In this case there is probably more "potential" for damage rather than actual damage. Abandonment of the site could be a serious problem. At this point damage is considered to be minimal and only 5 points are assessed.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS** N/A

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS (A or B)** 10



**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 10

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the operator had been sent a letter by certified mail, which required reclamation to be completed by November 19, 2007. The operator failed to comply or communicate with the Division regarding the reclamation requirement. This indicates indifference to the rules or lack of diligence. The Operator was aware of the requirements, but failed to act. The indifference to the rules indicates negligence, thus the assignment of points in the mid to upper part of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

X	Rapid Compliance	-11 to -20*
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	-1 to -10*
	(Operator complied within the abatement period required)	
X	Extended Compliance	0
	(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)	
	(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)	

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_

ASSIGN GOOD FAITH POINTS   --  

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *At this point no good faith points can be awarded because the abatement has not been completed. This category will be looked at again, once the abatement has been completed.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <u>MN-07-03-09</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>10</u>
III. TOTAL NEGLIGENCE POINTS	<u>10</u>
IV. TOTAL GOOD FAITH POINTS	<u>          </u>
TOTAL ASSESSED POINTS	<u>20</u>
TOTAL ASSESSED FINE	<u>\$ 440</u>